

Message Text

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TAGS: WIPO, EINV

SUBJECT: WIPO - NICE DIPLOMATIC CONFERENCE

REF: GENEVA 3372

1. AS THE USDEL KNOWS, THE SO-CALLED "TERRITORIAL CLAUSE"
(ARTICLE 24 OF THE STOCKHOLM ACT (1967) OF THE PARIS
CONVENTION) IS ONE OF THE NON-SUBSTANTIVE QUESTIONS BEING
CONSIDERED IN CONNECTION WITH THE PROPOSED REVISION OF THE
PARIS CONVENTION. THE ARGUMENTS FOR AND AGAINST ITS RETEN-
TION OR DELETION ARE SET FORTH IN THE WIPO ANALYSIS OF
"THE FOURTEEN QUESTIONS OF THE FIRST SESSION OF THE AD HOC
GROUP OF GOVERNMENTAL EXPERTS" (PR/GE/II/2, PARAGRAPHS 201-
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202).

2. EVEN IF ARTICLE 24 OF THE PARIS CONVENTION IS DELETED
IN THE PARIS CONVENTION AS REVISED IN THE NEXT DIPLOMATIC
CONFERENCE (PROBABLY IN BUDAPEST IN 1978), THIS ARTICLE
WILL REMAIN IN FORCE AS AMONG THOSE STATES THAT ARE PARTIES
TO THE 1967 TEXT OF THE PARIS CONVENTION BUT DO NOT REPEAT

NOT ACCEDE TO THE 1978 TEXT OF THAT CONVENTION. THEREFORE IT WOULD SEEM DESIRABLE TO RETAIN A REFERENCE IN THE REVISED NICE AGREEMENT TO ARTICLE 24. THE SAME FORMULA COULD BE USED AS IN ARTICLE 62(3) AND (4) OF THE PATENT

COOPERATION TREATY (1970) AND ARTICLE 39(4)(A) AND (B) OF THE TRADEMARK REGISTRATION TREATY (1973). UNDER THIS FORMULA THERE WOULD BE A SPECIFIC PARAGRAPH WHICH STATES THAT THE TERRITORIAL CLAUSE "SHALL IN NO WAY BE UNDERSTOOD AS IMPLYING THE RECOGNITION OR TACIT ACCEPTANCE BY A CONTRACTING STATE OF THE FACTUAL SITUATION CONCERNING A TERRITORY TO WHICH THE TREATY IS MADE APPLICABLE BY ANOTHER CONTRACTING STATE BY VIRTUE" OF THE SAID CLAUSE.

3. THE PRINCIPAL REASON FOR INCLUSION OF THE SO-CALLED TERRITORIAL CLAUSE IS AS FOLLOWS: "... IT IS A FACT THAT CERTAIN COUNTRIES CONDUCT THE EXTERNAL RELATIONS OF CERTAIN TERRITORIES--AS FOR EXAMPLE, THE UNITED KINGDOM DOES WITH RESPECT TO HONG KONG--IT IS IN THE INTEREST OF BOTH THE PEOPLES OF SUCH TERRITORIES AND ALL MEMBERS OF THE PARIS AND BERNE UNIONS THAT THE EXTENSION OF THE PARIS AND BERNE CONVENTIONS BE PERMITTED BECAUSE, OTHERWISE, THE INVENTIONS, TRADEMARKS, COPYRIGHTS, ETC., OF THOSE PEOPLES WOULD BE LEFT WITHOUT PROTECTION IN THE MEMBER COUNTRIES OF THE PARIS AND BERNE UNIONS, AND THE INVENTIONS, TRADEMARKS, COPYRIGHTS, ETC., OF THE NATIONALS OF THE MEMBER COUNTRIES OF THE PARIS AND BERNE UNIONS WOULD BE LEFT WITHOUT PROTECTION IN SUCH TERRITORIES." (PR/GE/II/2, PARAGRAPH 201).

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4. FYI. WHEN THE U.S. DEPOSITED ITS INSTRUMENT OF RATIFICATION FOR THE STOCKHOLM ACT OF THE PARIS CONVENTION (MAY 22, 1973) WITH THE DIRECTOR GENERAL OF WIPO, IT DECLARED, PURSUANT TO ARTICLE 24 THAT THE STOCKHOLM ACT SHALL BE APPLIED TO ALL TERRITORIES AND POSSESSIONS OF THE U.S. INCLUDING THE COMMONWEALTH OF PUERTO RICO. END FYI.

5. BECAUSE OF THE POLITICAL SENSITIVITY OF THIS ISSUE USDEL SHOULD MAINTAIN A LOW PROFILE WITH RESPECT TO IT. IF THE UK PROPOSES REINTRODUCTION IN NICE AGREEMENT OF ARTICLE 14 WHICH APPLIES ARTICLE 24 OF THE 1967 ACT OF THE PARIS CONVENTION (PROBABLY WITH THE SUPPORT OF THE NETHERLANDS), USDEL SHOULD VOTE FOR SUCH A PROPOSAL. FURTHER, IT WOULD BE PREFERABLE TO FOLLOW THE PCT AND TRT FORMULA, WHICH UK MAY BE EXPECTED TO DO. CHRISTOPHER

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